

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Tariff Filing Requirements for )  
Nondominant Common Carriers )

CC Docket 93-36

To: The Commission

**REPLY COMMENTS OF GENERAL COMMUNICATION, INC.**

General Communication, Inc. ("GCI") submits these reply comments  
in response to the Commission's Notice of Proposed Rulemaking ("NPRM")  
released on February 19, 1993 (FCC 93-102)

**I. The Proposed Rules Should Be Adopted For Nondominant Common Carriers**

Excluding AT&T and the LECs, there is general support<sup>2</sup> for the adoption of the Commission proposals to allow nondominant common carriers: (1) to file their interstate tariffs on not less than one days notice; (2) to reduce tariff content by allowing carriers to state either a maximum rate or a range of rates; and, (3) to give carriers formatting flexibility in filing tariffs and tariff

notice<sup>4</sup>. Parties are concerned about the lack of pre-effective tariff review if tariff filings are allowed to become effective on not less than one days notice and about tariff changes which are inconsistent with underlying contracts. These concerns can easily be addressed. First, the Commission has never and is not obligated to perform any pre-effective tariff review on nondominant carrier filings. The Commission reviews these tariff filings only when a petition to reject or suspend has been filed with the Commission. In only one instance<sup>5</sup> has a nondominant tariff filing been rejected or suspended. Therefore, the pre-effective review process is basically nonexistent. Furthermore, nondominant carriers who have not filed tariffs under the forbearance policy, have not been subjected to any pre-effective review. For customers with long term contracts, tariff changes are not made on such contracts to the detriment of the customer. Notification is easily made to the customer if there is any impact. GCI does not expect to make any such changes that would be detrimental to the customer. Carriers without market power cannot successfully charge excessive rates, engage in unlawful behavior or otherwise violate the Communications Act.

GCI agrees with the Commission's tentative conclusion that "existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into market, and the ability of firms to respond quickly

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<sup>4</sup>See Comments of Ad Hoc Telecommunications Users Committee, Capital Cities/ABC, Inc., et al. and International Communications Association.

<sup>5</sup>Capital Network Systems, Inc., 6 FCC Rcd 5609 (1991).

to market trends."<sup>6</sup> Tariff filings by nondominant carriers under the Commission's current rules inhibits the introduction of new services for a period of time, inhibits rate reductions in response to the marketplace and creates additional costs and administrative burdens. The Commission should streamline the tariff filing requirements for nondominant common carriers.

## II. Dominant Carriers Are Unaffected By This Proceeding

Tariff filing requirements for dominant carriers should remain as currently outlined by the Commission in its rules. Dominant carriers still have market power. They are able to use that power to the detriment of competitors and consumers alike.<sup>7</sup> It is appropriate to distinguish between dominant and nondominant carriers and subject each to differing regulatory treatment. The FCC has stated:

[W]e believe that it would defy logic and contradict the evidence available to regulate in an identical manner carriers who differ greatly in terms of their economic resources and market strength.<sup>8</sup>

Dominant carriers possess the power to frustrate the goals of competition and universal service by setting prices irrespective of costs.

Dominant and nondominant carriers are not similarly situated so the Commission is able to distinguish the type of tariff requirements imposed on

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<sup>6</sup>Tariff Filing Requirements for Nondominant Common Carriers, CC Docket 93-36, FCC 93-103, released February 19, 1993, paragraph 12.

<sup>7</sup>See, Competitive Carrier Orders.

<sup>8</sup>Competitive Carrier, 85 FCC 2d 1, 14 (1980).

the two different types of carriers. Dominant carriers are not subject to competitive pressures and thus have an incentive to cross subsidize or to unreasonably discriminate in their provision of services.

Since market forces are sufficient to constrain nondominant carriers from acting contrary to the public interest, regulatory oversight is not necessary. Nondominant carriers "do not have the ability to establish and maintain rates that are significantly above or below the market place price,"<sup>9</sup> and under these circumstances the costs of regulation far outweigh any possible benefits from it. Many state commissions agree with the conclusions of the Commission. The Kentucky Public Utilities Commission noted that "due to their lack of monopoly power, nondominant carriers will not be in a position to violate the [requirement that rates be] fair, just and reasonable."<sup>10</sup>

### III. The Proposed Rules Should Apply to Operator Service Provider Tariffs

As stated in our comments, the proposed rules to give carriers formatting flexibility in filing tariffs and tariff revisions on diskettes should apply to nondominant common carriers who provide operator services. Currently, informational tariffs of operator service providers are filed on one days notice. To reduce administrative burdens and filing fees, nondominant common carriers should be able to incorporate its operator service tariff filing into one interstate

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<sup>9</sup>Competitive Carrier, 77 FCC 2d 308, 316 (1979).

<sup>10</sup>Re Inter- and IntraLATA Intrastate Competition, 60 PUR 4th 24, 39-40 (Ky. PUC 1984). See also, Re Competitive Intrastate Offerings of Long Distance Telephone Service, 86 PUR 4th 57, 61 (N.C.U.C. 1987).


tariff. Having different formatting and filing responsibilities for the operator service section is burdensome and unnecessary.

### Conclusion

The Commission should adopt its proposed rules for nondominant common carriers to streamline, to the greatest extent possible, the tariff filing requirements. The Commission should also allow nondominant carriers to

## STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 19, 1993.



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**CERTIFICATE OF SERVICE**

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